

Seldat, Inc. and Tyson Jay Chandler and Donald Dupreist Ricks and Steven M. Garcia and Teamsters Local 63 and Mark Ruben Alatorre. Cases 21–CA–240526, 31–CA–240596, 31–CA–240598, 31–CA–240869, and 31–CA–240974

January 29, 2020

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN AND
EMANUEL

The General Counsel seeks a default judgment in this case on the ground that Seldat, Inc. (the Respondent) has failed to file an answer to the consolidated complaint. Upon charges filed by Tyson Jay Chandler on April 30, 2019, Donald Dupreist Ricks and Steven M. Garcia on April 29, 2019, Mark Ruben Alatorre on May 6, 2019, and Teamsters Local 63 on May 2, amended on July 5, 2019, the General Counsel issued an order consolidating cases, consolidated complaint, and notice of hearing on October 18, 2019, against the Respondent, alleging that it has violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act. The Respondent failed to file an answer.

On November 14, 2019, the General Counsel filed a Motion for Default Judgment with the Board. On November 20, 2019, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the consolidated complaint affirmatively stated that unless an answer was received on or before November 1, 2019, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true.¹ The undisputed allegations in the General Counsel's motion further disclose that the Region, by letter dated November 5, 2019, emailed to the Respondent, advised the Respondent that unless an answer was received by November 12, 2019, a motion for default judgment would be filed. Nevertheless, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations in the complaint

to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a California corporation with an office and place of business in Compton, California (the Compton facility), and a facility located in Fontana, California (the Fontana facility), where it has been engaged providing logistical transportation services, including intrastate, interstate and the international transportation of cargo.

In conducting its operations during the 12-month period ending March 27, 2019, the Respondent performed services valued in excess of \$50,000 in states other than the State of California.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

1. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and/or agents of the Respondent within the meaning of Section 2(13) of the Act.

Joe Pennell	West Coast Manager
Abel Garcia	Transportation Manager
Aaron Hunt	Senior Vice President
Kevin (Last Name Unknown)	Dispatcher
Steven (Last Name Unknown)	Dispatcher
Melissa Bijelic	Vice President of Human Resources

2. About March 8, 2019, the Respondent, by Transportation Manager Garcia, in the parking lot of the Fontana facility, engaged in surveillance of employee's union and/or protected concerted activities.

3. About April 16, 2019, the Respondent, by Senior Vice President Hunt, in the breakroom of the Compton facility, engaged in surveillance of employees' union and/or protected concerted activities by acting as the Respondent's election observer in a Board election.

4(a). About early April 2019, the Respondent, by Dispatcher Kevin, by telephone, interrogated employees about whether they were going to vote for the Union in a Board election.

¹ The General Counsel's motion also reveals that on October 31, 2019, the Respondent's attorney withdrew representation. That same date, the Respondent's Vice President of Human Resources advised the

Region that she would be representing the Respondent and confirmed receipt of the consolidated complaint.

(b) About early to mid-April 2019, the Respondent, by Kevin, by telephone, interrogated employees about whether they were going to vote for the Union in a Board election.

5. About April 16, 2019, the Respondent, by Dispatcher Steven, by telephone, interrogated an employee about whether the employee was going to vote in a Board election.

6(a). About April 16, 2019, the Respondent, by West Coast Manager Pennell, in the breakroom at the Fontana facility, interrogated an employee about how the employee voted in a Board election.

(b) About April 16, 2019, the Respondent, by Pennell, in his office at the Fontana facility, interrogated an employee about whether the employee voted in a Board election.

7(a). About March 8, 2019, the Respondent's employees engaged in concerted activities with each other for the purposes of mutual aid and protection by, *inter alia*, discussing the Respondent's pay scale.

(b) About April 26, 2019, the Respondent laid off about 36 employees, including Chandler, Ricks, Garcia, and Alatorre.

(c) The Respondent engaged in the conduct described above in paragraph 7(b), because employees engaged in the conduct described above in paragraph 7(a), and to discourage employees from engaging in these or other concerted activities.

(d) The Respondent engaged in the conduct described above in paragraph 7(b) because the employees of the Respondent formed and/or assisted the Union, and to discourage employees from engaging in these activities.

8(a). Since about April 2019 and continuing to about late May 2019, the Respondent reduced its drivers' wages by making the following changes to its drivers' pay scale on the dates indicated:

- i. About early April 2019, the Respondent stopped paying drivers to drive from the ports back to the Respondent's yards or from one port to another.
- ii. About April 23, 2019, the Respondent stopped paying drivers to move chassis or bobtails.
- iii. About April 29, 2019, the Respondent stopped paying drivers to move empty containers from customer yards to the Respondent's yards if the customer yards were within a 5-mile radius of the Respondent's yards.

(b) The Respondent engaged in the conduct described above in paragraph 8(a) because the employees of the Respondent formed and/or assisted the Union and engaged in

concerted activities, and to discourage employees from engaging in these activities.

9. The following employees of Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time drivers employed by the Employer at its facilities currently located at 927 South Santa Fe Avenue, Compton, California and 9421 Transportation Way, Fontana, California.

Excluded: All other employees, independent contractor drivers who own their own vehicles they operate, office clerical employees, professional employees, managerial employees, guards, and supervisors as defined in the Act.

10. On April 16, 2019, a representation election was conducted among the employees in the Unit and, on May 8, 2019, the Union was certified as the exclusive collective-bargaining representative of the Unit.

11. At all times since May 8, 2019, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

12(a). Since about May 13, 2019, the Union has requested in writing that the Respondent furnish the Union with the information in Items 1–4, 5(b), 13–17, and 19–26 of its May 13, 2019 letter attached hereto as Exhibit 1.

(b) The information requested by the Union, as described above in paragraph 12(a), is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

(c) Since about July 24, 2019, the Respondent, in writing, has failed and refused to furnish the Union with the information requested by it as described above in paragraphs 12(a)-(b).

13(a). Since about early May to about late May 2019, the Respondent made the following changes to its drivers' pay scale on the dates indicated:

- i. About early May 2019, the Respondent reduced by half drivers' pay for moving loaded containers from the Respondent's yards to its customers' yards if the customer was within a 5-mile radius from the Respondent's yard.
- ii. About the last week of April 2019, the Respondent began to record drivers' work time 2 hours after they arrived at the ports, instead of as soon as they arrived at the ports.
- iii. About mid-May 2019, the Respondent reduced by half drivers' pay for moving a bobtail, and began to only pay for bobtail moves at a dispatcher's discretion.

iv. About May 29, 2019, the Respondent began to pay drivers to move a bobtail only if they complete two full trips with a loaded container.

(b) The subjects set forth above in paragraph 13(a) relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(c) The Respondent engaged in the conduct described above in paragraphs 13(a)-(b) without prior notice to the Union and without first bargaining with the Union to an overall good-faith impasse for a collective-bargaining agreement.

(d) The Respondent engaged in the conduct described above in paragraph 13(a) because the employees of the Respondent formed and/or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

14(a). Since about May 13, 2019, the Union requested to meet with the Respondent for the purposes of negotiating an initial collective-bargaining agreement with respect to wages, hours, and other terms and conditions of employment.

(b) Since about July 24, 2019, the Respondent has failed and/or refused to meet and bargain with the Union as the exclusive collective-bargaining representative of the Unit.

(c) By the conduct described above in paragraph 14(b), the Respondent has failed and refused to bargain in good faith with the Union as the exclusive collective-bargaining representative of the Unit.

CONCLUSIONS OF LAW

1. By the conduct described above in paragraphs 2-6 and 7(c), the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

2. By the conduct described above in paragraphs 7(d), 8(b), and 13(d), the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(3) and (1) of the Act.

3. By the conduct described above in paragraphs 12 and 13(a) through (c), the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act.

4. By the conduct described above in paragraph 14, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-

bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(5) and (1) of the Act.

5. The unfair labor practices of the Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(3) and (1) of the Act by laying off about 36 employees, including Tyson Jay Chandler, Donald Dupreist Ricks, Steven M. Garcia, and Mark Ruben Alatorre, because they formed or assisted the Union, and to discourage employees from engaging in these activities, we shall order the Respondent to offer them full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them.

Backpay shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). In addition, we shall order the Respondent to compensate these employees for any adverse tax consequences of receiving a lump-sum backpay award, and to file with the Regional Director for Region 21, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for the laid off employees. *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

In accordance with our recent decision in *King Soopers, Inc.*, 364 NLRB No. 93 (2016), we shall also order the Respondent to compensate these employees for their search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra. The Respondent shall also be required to remove from its files any and all references to the employees' unlawful layoffs, and to notify the employees in writing that this has been done and that their layoffs will not be used against them in any way.

Having further found that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to bargain with

the Union, we shall order the Respondent to recognize and, on request, bargain with the Union as the exclusive collective-bargaining representative of the unit employees with respect to wages, hours, benefits, and other terms and conditions of employment and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964).

In addition, having found that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to furnish the Union with relevant and necessary information, we shall order the Respondent to furnish the Union with the information it requested on May 13, 2019, and set forth in Exhibit 1.

Finally, having found that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally changing the terms and conditions of employment of its unit employees, including reducing by half drivers' pay for moving a bob-tail, for moving loaded containers from the Respondent's yards to its customers' yards if the customer was within a 5-mile radius, and recording drivers' work time 2 hours after they arrived at the ports, we shall order the Respondent to rescind the changes and retroactively restore the status quo. In addition, the Respondent shall make its unit employees whole for any loss of earnings and other benefits they may have suffered as a result of the unlawful changes, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), *enfd.* 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons*, *supra*, compounded daily as prescribed in *Kentucky River Medical Center*, *supra*.

ORDER

The National Labor Relations Board orders that the Respondent, Seldat, Inc., Compton, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Engaging in surveillance of its employees' union or other protected concerted activities.
 - (b) Coercively interrogating employees about their union activities, sympathies, or support.
 - (c) Laying off employees because the employees engaged in concerted activities with each other for purposes of mutual aid and protection by discussing their terms and

conditions of employment and/or because they formed or assisted the Union, and to discourage employees from engaging in these or other concerted or Union activities.

(d) Unilaterally changing the terms and conditions of employment of its unit employees by reducing employees' wages because they formed or assisted the Union and engaged in concerted activities and to discourage employees from engaging in these activities.

(e) Failing and refusing to recognize and bargain collectively and in good faith with Teamsters Local 63 as the exclusive collective-bargaining representative of employees in the unit. The unit is:

Included: All full-time and regular part-time drivers employed by the Employer at its facilities currently located at 927 South Santa Fe Avenue, Compton, California and 9421 Transportation Way, Fontana, California.

Excluded: All other employees, independent contractor drivers who own their own vehicles they operate, office clerical employees, professional employees, managerial employees, guards, and supervisors as defined in the Act.

(f) Failing and refusing to recognize and bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the exclusive collective-bargaining representative of the Respondent's unit employees.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain with the Union as the exclusive representative of the employees in the appropriate bargaining unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Rescind the unilateral changes to the terms and conditions of employment of its unit employees, including the reductions to their wages and to their work time, and restore the status quo that previously existed.

(c) Furnish to the Union in a timely manner the information requested on May 13, 2019, as set forth in Exhibit 1.

(d) Within 14 days from the date of this Order, offer the 36 unit employees who were unlawfully laid off, including Chandler, Ricks, Garcia, and Alatorre, full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(e) Make whole the 36 employees who were unlawfully laid off, including Chandler, Ricks, Garcia, and Alatorre, for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(f) Make whole unit employees for any loss of earnings and other benefits suffered as a result of the unlawful unilateral reduction of their wages and work time, in the manner set forth in the remedy section of the decision.

(g) Compensate affected unit employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 21, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each affected unit employee.

(h) Within 14 days from the date of this Order, remove from its files any reference to the unlawful layoffs of the 36 unit employees, including Candler, Ricks, Garcia and Alatorre, and within 3 days thereafter, notify the employees in writing that this has been done and that the layoffs will not be used against them in any way.

(i) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(j) Within 14 days after service by the Region 21, post at its Compton and Fontana, California facilities copies of the attached notice marked "Appendix" in English and in Spanish. Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices in English and Spanish, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice in English and Spanish to all current

employees and former employees employed by the Respondent at any time since March 8, 2019.

(k) Within 21 days after service by the Region, file with the Regional Director for Region 21 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT coercively interrogate you about your union activities, sympathies, or support.

WE WILL NOT engage in surveillance of your union or other protected concerted activities.

WE WILL NOT lay you off because you have engaged in protected concerted activities, such as discussing the company's pay scale for the purposes of employees' mutual aid and protection or because you joined or supported Teamsters Local 63 (the Union) or any other labor organization.

WE WILL NOT unilaterally change your terms and conditions of employment, including making changes to your wages and work time, because you have engaged in protected concerted activities or because you joined or supported the Union or any other labor organization.

WE WILL NOT fail and refuse to bargain with the Union as the exclusive collective-bargaining representative of our employees in the unit. The bargaining unit is:

Included: All full-time and regular part-time drivers employed by the Employer at its facilities currently located at 927 South Santa Fe Avenue, Compton, California and 9421 Transportation Way, Fontana, California.

Excluded: All other employees, independent contractor drivers who own their own vehicles they operate, office

clerical employees, professional employees, managerial employees, guards, and supervisors as defined in the Act.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant to and necessary for the Union's performance of its functions as the collective-bargaining representative of our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union as your exclusive collective-bargaining representative concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

WE WILL furnish to the Union in a timely manner the information it requested on May 13, 2019.

WE WILL rescind the unilateral changes to your terms and conditions of employment, including the reductions to your wages and work time, and restore the status quo that previously existed.

WE WILL, within 14 days from the date of this Order, offer the 36 employees we unlawfully laid off full reinstatement to their former jobs or, if those jobs no longer exist, to a substantially equivalent position, without prejudice to their seniority or any other rights or privileges they previously enjoyed.

WE WILL make whole the 36 employees who we unlawfully laid off, including Tyson Jay Chandler, Donald Dupreist Ricks, Steven M. Garcia, and Mark Ruben Alatorre, for any loss of earnings and other benefits resulting from our unlawful conduct, less any net earnings, plus interest, plus reasonable search-for-work and interim employment expenses.

WE WILL compensate affected employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 21, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each affected unit employee.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful layoff of 36 employees, including Tyson Jay Chandler, Donald Dupreist Ricks, Steven M. Garcia, and Mark Ruben Alatorre, and WE WILL, within 3 days thereafter, notify the employees in writing that this has been done and that the layoffs will not be used against them in any way.

SELDAT, INC.

The Board's decision can be found at www.nlr.gov/case/21-CA-240526 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

disputes regarding employee discipline and other labor disputes may be resolved during our negotiations for a signed collective bargaining agreement.

INFORMATION REQUESTS

The following represents a summary of relevant and necessary data needed to prepare for bargaining a first agreement with Seldat 927 South Santa Fe Avenue, Compton, CA 90221 ("Compton") and 9421 Transportation Way, Fontana, CA 92335 ("Fontana") facilities. Except where noted, each item relates to IBT Local 63-represented workers. Where the data is not available for the time period or in the format requested, provide them for the next closest comparable period and format. Additional information, updates and supporting data may be requested during negotiations on an as-needed basis.

Please provide the following information as soon as possible. We would appreciate receiving the information in sections as it becomes available rather than waiting for all data to be assembled and then delivered. Please provide this information both on paper and in computer-readable form in Microsoft document compatible format (Word, Excel, etc):

A. LABOR FORCE DATA

- (1) Provide the name, home address, and hire date for all bargaining unit employees. Please provide Local Union 63 by the 10th calendar day of each month, beginning June 10, 2019, with an updated listing of this employee contact information on a monthly basis for each future subsequent month. These subsequent monthly reports must identify those employees who have been assigned or newly employed in the bargaining unit positions and those employees who the Employer claims have left such bargaining unit positions since the last report.
- (2) All versions of any employment policy and procedures manual covering the bargaining unit employees at all times on and after January 1, 2019 to the date of your response to this request, including any proposed modifications and any memorandums interpreting or applying such policies.
- (3) For the bargaining unit driver classification:
 - a. Indicate the average number of hours worked per month (miles driven were applicable), and the total payroll broken down by regular time, overtime, shift differential and incentive pay or other bonus type compensation for the calendar years 2017, 2018 and the first four months of 2019;
 - b. Identify the hourly pay rates currently in effect including the number of employees by classification at each rate (Top rate, starting rate, training rate, shift differential, etc.) and by method of pay if other than hourly pay (including but not limited to percent of revenue, parcel delivered, etc.). In addition, please describe the terms and conditions of other forms of compensation and allowances such as layover pay, meal allowance, uniform

allowance (if uniforms are provided, indicate how frequently they are replaced) and any other compensation required to be paid under the California Labor Codes.

- c. Please indicate the calendar dates on which any general wage increases or decreases which have become effective since January 1, 2019.
 - d. Route sheets or other documents evidencing Seldat driver routes for the Fontana and Compton locations, including the frequency those routes were made by Seldat employee drivers, for the period from January 1, 2019 to the current.
 - e. Policies/procedures/rules regarding the assignment of work to bargaining unit employees.
 - f. Policies/procedures/rules regarding the assignment of work to non-bargaining unit drivers utilized by Seldat.
 - g. Identify the number of non-employee drivers (third-party subcontractors/owner-operators) utilized by Seldat in each month in 2019.
 - h. Identify the average number of routes/loads tendered to non-employee owner-operators (subcontractors) at the Compton and Fontana locations per month, the overall percent of freight revenue generated by owner-operators/subcontractors on a nominal and percentage basis when compared to the bargaining unit for the Compton and Fontana locations for the calendar years 2017, 2018 and the first four months of 2019.
- (4) Identify driver(s) whose employment has ended since April 1, 2019, the service dates with Seldat, and the reason for termination (layoff, discharge, retirement, voluntary quit, or other reason). In the case of a discharge based on violation of a written policy, identify what policy was violated resulting in the discharge. In case of a layoff(s) since at least April 1, 2019, please provide the reason(s) and documentation regarding the layoff(s) for each of the employees laid off, including but not limited to:
- a. Business forecasting and/or economic data supporting necessity of any layoffs made since April 1, 2019.
 - b. Identify the number of business accounts lost in 2018 and 2019.
 - c. Revenue and profit data from the Compton and Fontana locations 2018-2019.
 - d. The name(s) of the staffing agency(ies), owner-operator(s), subcontractor(s), or third-party company(ies) that Seldat has contracted with since January 1, 2019 to perform work that is or has been performed by bargaining unit employees.

DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

- e. The number of owner-operator/subcontracted drivers that Seldat has subcontracted with since January 1, 2019 to perform work that is or has been performed by bargaining unit employees, including the positions these subcontracted drivers have held. Please include the where such owner-operator/subcontracted drivers primarily report to or work out of the Fontana or Compton facilities.

(5) Age and Years of Service

- a. Indicate Age: Number of employees in each of the following age categories (by Job Classification) as of the week-end payroll period date closest to May 1st 2019:

1. under 25 years old
2. 26-29 years old
3. 30-34 years old
4. 35-39 years old
5. 40-44 years old
6. 45-49 years old
7. 50-54 years old
8. 55-59 years old
9. 60-64 years old
10. 65 years old or older

- b. Years of Service: Number of employees in each of the following years-of-service categories (by Classification) as of the week-end payroll period date closest to May 1, 2019:

1. less than 2 years of service;
2. 2 years but less than 5 years;
3. 5-9 years of service;
4. 10 -14 years of service;
5. 15-19 years of service;
6. 20-24 years of service;
7. 25-29 years of service
8. 30 or more years of service.

B. HEALTH AND WELFARE

- (6) Please identify what type of health insurance (HMO, PPO, etc) is offered at the Compton and Fontana facilities, and the number of employees who have opted to participate in the company health insurance plan by plan type (medical, dental, vision) and coverage level (employee, employee plus one, and family or other appropriate category).

- (7) Please identify the current and projected 2019 and 2020 employee and employer premiums by types of coverage selected (co-pays on a weekly, monthly basis for example).
- (8) Please provide the latest available Summary Plan Descriptions for each benefit plan with amendments and the latest Form 5500's covering these represented workers.
- (9) Please describe the terms and conditions of any other type of insurance (life, short term disability, etc) offered to represented employees and the cost, if any, associated with those plans for employees.

C. PENSION and RETIREMENT

- (10) Please provide the Summary Plan Descriptions describing all features of any retirement or savings plan including eligibility terms and enrollment process, investment options, company match if applicable, vesting schedule, etc.
- (11) Please identify the number of employees who participate in each of the company's retirement or savings plans, including, but not limited to average level of their contribution, average balance (nominal amount) in the plan currently, and the number of participants who currently participate at the maximum employer match.
- (12) Please describe and provide the latest available Form 5500's and Summary Plan Description for any retirement plan covering these represented workers.

C. HOLIDAYS AND LEAVES

- (13) Please indicate which days the company designated as holidays for 2019, 2020, and 2021, and the conditions under which an employee qualifies for holiday pay and how the holiday pay is calculated (i.e. does the employee have to work the last scheduled day before and/or the last scheduled day after the holiday to qualify, if the employee works the holiday, what is he/she paid, etc). Please indicate the number and percent of eligible and available employees who worked each designated holiday over since January 1, 2019.
- (14) Identify any approved leave without pay that regular employees currently are eligible for and how an employee qualifies for such benefits including but not limited to: bereavement leave, sick leave, jury duty, maternity leave, etc.

D. VACATION (Paid Time Off)

- (15) Please provide the number of vacation/paid-time-off hours each employee currently has earned as of May 1, 2019. Provide a copy of all current vacation/paid-time-off policies, including the policies for qualification for,

DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

earning, use and payment of vacation/paid-time-off hours, and any changes to such policies since January 1, 2019.

E. SAFETY AND HEALTH

- (16) Provide the number of drug and alcohol tests performed from January 1, 2019 to present for random, reasonable suspicion, and post-accident testing. Include the number of positive tests during that period, identifying the five most common reasons for a positive test on a percentage basis.
- (17) Provide a copy of each form in use by Seldat at the Compton and Fontana locations for chain of custody, consent to testing and drug use, aftercare agreements and any other form signed by workers regarding DOT examinations or FMLA leave.
- (18) Disclose whether the Compton and Fontana locations are scheduled for natural gas and or ethanol applications or other experimental fueling alternatives other than gas or diesel facilities.
- (19) For 2017, 2018 and 2019 through 5/1/2019, identify the number of applications filed for FMLA leave and the average duration of leave taken.
- (20) For 2017, 2018 and 2019 through 5/1/2019, provide the number of serious on-the-job accidents and injuries, including fatalities, involving bargaining unit workers and facilities.
- (21) Identify whether the Compton and Fontana locations are participating in OSHA cooperative compliance programs.
- (22) Please provide all company documents relevant to Seldat drug and alcohol policy and drug testing program.
- (23) Please describe how Seldat has implemented or is preparing for the implementation of FMCSA's Comprehensive Safety Analysis program at the Compton and Fontana locations and any driver scoring or evaluation metrics being designed that can assign 'points' or grades to drivers that could affect the carrier's rating.
- (24) Please provide current copies of the following documents:
 - OSHA Written Programs, such as:
 - a. Hazard Communication (CFR §1910.1200);
 - b. Hazardous Waste Operations and Emergency Response (CFR §1910.120);

- c. Personal Protective Equipment (CFR §1910.132);
- d. Powered Industrial Trucks (CFR §1910.178);
- e. OSHA 300 Log Summaries (For the past 3 years in database or spreadsheet format);
- f. Lost Work Day Injury Illness Rate (LWDII) (For the Service Center and company-wide); and
- g. Total hours worked for all employees (For the Service Center and company-wide);

All Company-Specific Programs, both written and on video, such as:

- a. Behavior Based Safety Programs, including Training Guides; and
- b. Safety Incentive Programs.

F. OTHER

- (25) Please provide a copy of all Seldat written communications regarding wage and benefit issues that were sent to bargaining unit employees since January 1, 2019.
- (26) Please describe the in-cab technology that drivers are exposed to including all on-board safety systems, GPS devices, on-board computers, and black boxes (EOBRs) and if such technology is used to support employee discipline. Please describe the number of occasions and types and reason for such discipline since January 1, 2019 and if any company policies or programs exist concerning the use of data generated by such devices. In addition, please describe any digital surveillance, video-monitoring, or recording technology used by Seldat to record, monitor, and/or surveil members of the bargaining unit on the Fontana and Compton locations.
- (27) Please provide a copy of the Form M Annual Report required to be filed annually at FMCSA, USDOT for 2017 through 2019.

If you have any questions regarding these requests, please do not hesitate to contact me at the office address above, at my email address: rickellison@local63.net or my mobile number: (626) 625-7105.

Sincerely,



Rick Ellison
Business Representative
Teamsters Local No. 63